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COMMERCE FOR USPTO KARIN FERRITER

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GROVES ON IPR

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¶1. (SBU) SUMMARY: The GOE is anxious to deepen engagement with the USG on concerns about Intellectual Property Rights protection, officials from the ministries of health, trade, culture, and telecommunications told USTR's Jennifer Groves during a visit to Cairo on Nov. 12 to discuss USTR's Special 301 Initiative Action Plan. However, GOE health officials vigorously defended an interpretation of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement that fails to adequately protect pharmaceutical test data, and information technology officials conceded that the Ministry of Culture -- which has a poor record of IPR enforcement -- has retained authority for policing optical discs containing pirated movies, music, and non-functional copyright-protected material. The GOE experts agreed to participate in digital video conferences in coming months to address these concerns in more detail. END SUMMARY.

¶2. (U) Jennifer Groves, USTR Director for Intellectual Property and Innovation and Chair of the 301 Committee, and Karin Ferriter, attorney advisor in the US Patent and Trademark Office, visited Cairo on Nov. 12 to discuss items in USTR's Special 301 Initiative Action Plan for Egypt (ref A) with a team of Egyptian government IPR experts. The discussions followed on discussions with the GOE by USTR and Post regarding the release of the initiative action plan in August (ref B). During her visit, Ferriter also conducted training with Egyptian design examiners in the commercial registry office and met with patent office officials regarding Patent Cooperation Treaty (PCT) minimum documentation issues.

PHARMACEUTICAL IPR CONCERNS

¶3. (U) Hesham Ragheb, senior legal advisor in the Ministry of Trade and Industry, organized a group of GOE experts including Mokhtar Warida, senior advisor to the Minister of Health (MOH); two MOH advisory committee experts, Bahaa Fayz and Fawzy el-Refai; Sherif Hashem, senior official in the Information Technology Industry Development Agency (ITIDA); and commercial registry, copyright office, foreign commercial service, and other GOE agencies related to IPR.

¶4. (U) Warida stated that the World Trade Organization's

TRIPS Council had ruled that Egypt's 2002 law on intellectual property rights is compliant with the GOE's TRIPS obligations. Egypt will protect any confidential pharmaceutical test data it requires companies to submit as part of their applications for marketing approval of their products, he said, adding that he believed no companies have complained about unauthorized use of their data.

¶15. (U) Ferriter responded that even if the text of the GOE's IPR law is considered TRIPS compliant, the GOE's implementation falls short of its obligations. She cited the GOE practice of requiring companies to assert they are not submitting confidential test data as part of their application, while at the same time admittedly relying on FDA certificates for marketing approval. The GOE should uphold the TRIPS principle that companies that invest in pharmaceutical research should be compensated for their investment in research for safety and efficacy investigations, she said. She added that reliance only on published summary safety and efficacy data and FDA approval certificates violates this principle.

¶16. (SBU) Groves commented that this GOE practice was a "clever way of getting around the obligation" to protect test data. (NOTE: This is a potential problem because generic drug companies could win GOE marketing approval for their products by relying on the innovator's FDA approval during the data protection period without the innovator's permission. END NOTE.) Egypt's interpretation of its obligations is isolated in the international community, she said. Warida responded that there is no international consensus on how to interpret these obligations. He also said the data protection obligations in TRIPS may be interpreted different ways and noted that the GOE considers the US data exclusivity system to be "TRIPS Plus," or exceeding Egypt's TRIPS obligations.

COPYRIGHT ENFORCEMENT CONCERNS

¶17. (SBU) Regarding enforcement of IPR for software, Hashem said that ITIDA is responsible for keeping pirated functional computer software out of the Egyptian market, but that the Ministry of Culture is responsible for IPR enforcement for copyright-protected non-functional content of optical discs such as pirated music and movies. Both agencies would have IPR enforcement responsibility for software products that include both functional content and non-functional content such as music or movies, he said. (COMMENT: This was disappointing and in contrast to our previous understanding of a 2006 prime ministerial decree that gave ITIDA exclusive authority over all "computer works (software and database)." ITIDA officials had said that based on the decree, they expected to exclusively enforce all optical disc piracy. ITIDA has been much more assertive in promoting IPR awareness, while the Ministry of Culture has a long record of poor IPR enforcement. END COMMENT.)

¶18. (U) The GOE experts did not dispute Groves' assertion of widespread pirating of university textbooks, such as an estimate by the International Intellectual Property Association that 90 percent of Egyptian medical textbooks are pirated. In fact, several of the experts were professors and noted that they write textbooks and personally appreciate enforcement of IPR in this area. Groves called for more GOE investigations, arrests, and prosecutions of people involved in commercial-scale textbook piracy and for the GOE to order all universities to use legal textbooks. They noted that the Ministry of Culture carries this responsibility.

¶19. (U) Hashem responded that textbook companies could help reduce pirating by offering discounts for legitimate products. Microsoft successfully adopted a similar strategy to reduce the use of pirated versions of its software in government offices, he said.

POSITIVE COLLABORATION

¶10. (U) While expressing concern about software enforcement issues, Groves noted the positive consultations USTR has had with ITIDA in Washington, USAID support of judicial training, and ITIDA's support for several cyber crime and IPR enforcement conferences that include USG experts.

¶11. (U) During the meeting, both sides agreed to future DVCs with their experts. The first of which would focus on pharmaceutical concerns, followed by a DVC on copyright enforcement concerns.

12 (SBU) COMMENT: While the meeting demonstrated a sincere interest by the GOE in engaging on IPR issues, it also demonstrated clearly that stark differences separate the USG and GOE on adequate pharmaceutical data protection and that other concerns remain in the Special 301 Initiative Action Plan. We hope to narrow these differences during the DVCs and Minister of Health Gabali's upcoming visit to Washington.

END COMMENT.
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